

**HIPAA BUSINESS ASSOCIATE
Interagency Memorandum of Understanding**

The parties to this Business Associate Interagency Memorandum of Understanding ("MOU") are the [Colorado Department of _____] [Name of Higher Education Institution] ("State," "Covered Entity" or "CE") and the [Colorado Department of _____] [Name of Higher Education Institution] ("Contractor," "or "Associate"). This MOU is effective as of _____ or the compliance date of the Privacy Rule (defined below), whichever first occurs (the "MOU Effective Date").

RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws, as amended.
- C. As part of the HIPAA Regulations, the Privacy Rule (defined below) requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this MOU.
- D. Authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract under Encumbrance Number _____ in Fund Number _____, Appropriation Account _____ and Organization Number _____.
- E. Required approval, clearance and coordination has been accomplished from and with appropriate agencies.

The parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this MOU shall have the definitions set forth in the HIPAA Privacy Rule at 45 C.F.R. Parts 160 and 164, as amended ("Privacy Rule"). In the event of any conflict between the mandatory provisions of the Privacy Rule and the provisions of this MOU, the Privacy Rule shall control. Where the provisions of this MOU differ from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of this MOU shall control.

b. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

c. “Protected Information” shall mean PHI provided by CE to Associate or created or received by Associate on CE’s behalf.

2. Statement of Work and Responsibilities. [Detailed statement of work]

3. Payment Amount and Billing Procedure. [In consideration of Associate performing its obligations under Section 2 above, CE will transfer \$_____ upon satisfactory completion of performance.]

4. Term. The term of this MOU begins on the MOU Effective Date, as set forth in the opening paragraph of this MOU, and runs through in including _____.

5. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate’s obligations under and as permitted by the terms of this MOU. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this MOU; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR Section 502(j)(1). To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this MOU and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this MOU. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this MOU within five (5) days of becoming aware of such use or disclosure.

e. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under this MOU, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this MOU and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. Associate shall implement and maintain appropriate sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524.

g. Amendment of PHI. Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within five (5) days of the receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE.

h. Accounting Rights. Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528. As set forth in, and as limited by, 45 C.F.R. Section 164.528, Associate shall not provide an accounting to CE of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 C.F.R. Section 164.506; (ii) to individuals of Protected Information about them as set forth in 45 C.F.R. Section 164.502; (iii) pursuant to an authorization as provided in 45 CFR Section 164.508; (iv) to persons involved in the individual's

care or other notification purposes as set forth in 45 C.F.R. Section 164.510; (v) for national security or intelligence purposes as set forth in 45 C.F.R. Section 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 C.F.R. Section 164.512(k)(5). Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 5(b) of this MOU.

i. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the Privacy Rule. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule including, but not limited to, 45 CFR Sections 164.502(b) and 164.514(d).

k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Notwithstanding Section 7(d) of this MOU, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of this MOU and shall continue to maintain the information required under Section 5(h) of this MOU for a period of six (6) years after termination of the Contract.

m. Notification of Breach. During the term of this MOU, Associate shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

n. Audits, Inspection and Enforcement. Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this MOU for the purpose of determining whether Associate has complied with this MOU; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this MOU, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this MOU.

o. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to CE pursuant to this MOU, in accordance with the standards and requirements of the Privacy Rule, until such Protected Information is received by CE, and in accordance with any specifications set forth in Attachment A.

6. Obligations of CE.

a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Associate pursuant to this MOU, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by Associate, and in accordance with any specifications set forth in Attachment A.

b. Notice of Changes. CE shall provide Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Associate's use or disclosure of Protected Information. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR Section 164.522. CE may effectuate any and all such notices of de-identified information via posting on CE's web site. Associate shall continually monitor CE's designated web site for notice of changes to CE's HIPAA privacy policies and practices.

7. Termination.

a. Without Cause. Either of the parties shall have the right to terminate this MOU by giving the other party _____ days notice. If notice is given, the MOU will terminate at the

end of _____ days, and the liabilities of the parties hereunder for further performance of the terms of the MOU shall thereupon cease, but the parties shall not be released from duty to perform up to the date of termination.

b. Material Breach. Any material breach by Associate of any provision of this MOU, as determined by CE, shall be grounds for immediate termination of the Contract by CE. Any dispute concerning the performance of this MOU which cannot be resolved at the divisional level shall be referred to superior departmental management staff designated by each department. Failing resolution at that level, disputes shall be presented to the executive directors of each department for resolution. Failing resolution by the executive directors, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final. This dispute resolution mechanism is in addition to, and not in lieu of, any other reporting or other requirement of federal or state law concerning alleged privacy violations.

c. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this MOU or another arrangement and does not terminate this MOU pursuant to Section 7(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate this MOU, if feasible or (ii) if termination of this MOU is not feasible, CE shall report Associate's breach or violation to the Colorado Attorney General's Office and to the Secretary of the U.S. Department of Health and Human Services.

d. Judicial or Administrative Proceedings. Either party may terminate this MOU, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

e. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this MOU, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate shall continue to extend the protections of Sections 5(a), 5(b), 5(c), 5(d) and 5(e) of this MOU to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

8. No Waiver of Immunity. No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.

9. Defense. To the extent any legal action against either party is not covered by the Risk Management Fund or other authorized self-insurance fund for tort claims, each party shall defend itself at its own expense in any action by third parties.

10. Disclaimer. CE makes no warranty or representation that compliance by Associate with this MOU, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

11. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this MOU.

12. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this MOU may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or privacy of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this MOU embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate the MOU upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this MOU when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this MOU providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this MOU.

13. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations

under this MOU, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy of PHI, except where Associate or its subcontractor, employee or agent is a named adverse party.

14. No Third Party Beneficiaries. Nothing express or implied in this MOU is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

15. Interpretation. This MOU shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this MOU shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

16. Survival of Certain Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 7(d) ("Effect of Termination") and Section 14 ("No Third Party Beneficiaries") shall survive termination of this MOU and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate.

17. Representatives and Notice.

a. Representatives. For the purpose of this MOU, the individuals listed below are hereby designated as the parties' respective representatives. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

State/Covered Entity Representative:

Name: _____
Title: _____
Department and Division: _____
Address: _____

Contractor/Business Associate Representative:

Name: _____
Title: _____
Department and Division: _____
Address: _____

18. Availability of Funds. Payment pursuant to this MOU, if in any part federally funded, is subject to and contingent upon the continuing availability of federal funds for the purposes

hereof. If any of said federal funds become unavailable, as determined by the CE, either party may immediately terminate or seek to amend this MOU.

19. Audits. In addition to any other audit rights in this MOU, Associate shall permit CE and any authorized federal agency to monitor and audit records and activities which are or have been undertaken pursuant to this MOU.

20. No Assignment. Except as otherwise provided, the duties and obligations of Associate shall not be assigned, delegated or subcontracted except with the express prior written consent of CE. Any subcontractors or agents used by BA to perform any services in connection with this MOU shall be subject to the requirements of this MOU.

21. Controller's Approval. This MOU shall not be deemed valid until it shall has been approved by the State Controller or such assistant as he may designate.

IN WITNESS WHEREOF, the parties hereto have duly executed this MOU as of the MOU Effective Date.

Contractor/Associate

State/Covered Entity

STATE OF COLORADO
BILL OWENS, GOVERNOR

STATE OF COLORADO
BILL OWENS, GOVERNOR

By: _____
Executive Director

By: _____
Executive Director

Department of: _____

Department of: _____

Date: _____

Date: _____

STATE CONTROLLER
ARTHUR L. BARNHART

By: _____

Date: _____

ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate MOU dated _____, between _____ and _____ (“MOU”). This Attachment may be amended from time to time as provided in Section 12(b) of the MOU.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 5(a) of the MOU, Associate may use Protected Information as follows: _____

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 5(b) of the MOU, Associate may disclose Protected Information as follows: _____

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under the MOU: _____

4. Receipt. Associate’s receipt of Protected Information pursuant to the MOU shall be deemed to occur as follows, and Associate’s obligations under the MOU shall commence with respect to such PHI upon such receipt: _____

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: _____

6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*

Contractor/Associate

State/Covered Entity

STATE OF COLORADO
BILL OWENS, GOVERNOR

STATE OF COLORADO
BILL OWENS, GOVERNOR

By: _____
Executive Director

By: _____
Executive Director

Department of _____

Department of _____

Date: _____

Date: _____